

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1044 of 1997

in

SPECIAL CIVIL APPLICATION No 600 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT RAJYA JAHER BANDHKAM MAJOOR MANDAL

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 1044 of 1997
MR MUKUL SINHA for Appellant
MR DA BAMBHANIA for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE A.L.DAVE

Date of decision: 24/03/98

ORAL JUDGEMENT

1. Admitted. Mr. Bambhania, learned Additional

Government Pleader appears and waives service of notice of admission. In the facts and circumstances of the case, matter is taken up today for final hearing.

2. This appeal is filed against judgment and order passed by the learned Single Judge in Special Civil Application No. 804 of 1995, decided on 16th July, 1997. By the impugned order, the learned Single Judge disposed of a number of Special Civil Applications and Rule issued thereon stood disposed of in the terms mentioned in the judgment. In paragraph 13, at one place, however, the learned Single Judge observed:

"...In that eventuality, the Federations, Unions and Associations shall be at liberty to raise industrial dispute in the matter which is the only appropriate remedy available to them." (emphasis supplied).

3. Mr. Sinha contended that jurisdiction and exercise of discretion are two different things. In a given case, a High Court while exercising extraordinary powers under Article 226 of the Constitution, may think it fit not to exercise those powers and may direct a party to avail of an alternative remedy available to him. But it is entirely different thing from saying that a party cannot avail a constitutional remedy available to him or that a High Court in the judgment would observe that, even in future if a dispute would arise, the only remedy available to the party would be to raise an industrial dispute.

4. In our opinion, the contention raised by Mr. Sinha is well founded and must be accepted. Hence, to the extent the learned Single Judge has directed that even in future any dispute would arise, the Federations, Unions and Associations would be at liberty to raise an industrial dispute in the matter, which is the only appropriate remedy available to them cannot be said to be in accordance with law and the learned Single Judge has committed an error of law in using the expression "only". It is open to a party to take an appropriate proceeding including approaching this Court by invoking provisions of Article 226 of the Constitution. It is for an appropriate Court to consider the facts and circumstances, questions raised before it and to pass an appropriate order either to entertain the petition or considering the facts and circumstances, to direct a party to approach an appropriate forum.

5. In the result, Letters Patent Appeal is allowed to the extent aforesaid. No costs.

6. We may clarify that, though the learned counsel for the appellant has raised other issues, they were not pressed at the time of hearing of the appeal. Hence, we do not express any opinion on those aspects. He also states that, after the petitions were disposed of, some actions were taken which the appellant would be challenging in appropriate forum.

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